

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Canada Postal Corporation—United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2018-2

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT
FOR CANADA POST NEGOTIATED SERVICE AGREEMENT

(November 27, 2017)

The Public Representative hereby provides comments pursuant to Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of a Type 2 rate adjustment for inbound letter post entered pursuant to an additional Inbound Market Dominant Multi-Service Agreement.² The Notice concerns the inbound portion of a bilateral agreement with the Canada Post Corporation (Canada Post 2016 Agreement), which would set negotiated rates for inbound letter post. Notice at 1.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 20, 2017..

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Notice of the United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 17, 2017 (Notice)..

2010 Agreement) within the product.³ Subsequently, the Commission determined that bilateral agreements with HongKong Post (HongKong Post Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.⁴ Furthermore, the Commission approved the addition of bilateral agreements with Singapore Post Limited, Australian Postal Corporation, Korea Post and Royal Postnl to the product.⁵ In Order No. 1864, the Commission requested that the Postal Service put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes⁶. The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence, including an existing agreement with Canada Post (2016 Agreement).⁷

The Postal Service states that the Canada Post 2018 Agreement replaces the 2016 Agreement, which was included within Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product grouping. Notice at 1. The Postal Service asserts that the Canada Post 2018 Agreement is functionally equivalent to the TNT Agreement filed in Docket No. R2010-5, which was included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 9. Consequently, the Postal Service proposes to include the Canada Post 2018

³ See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

⁴ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; *see also* Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011.

⁵ See PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011; PRC Order No. 996, Order Concerning Additional Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011; PRC Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), Docket No. R2013-9, October 30, 2013 and PRC Order No. 1602, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), Docket No. R2013-4, December 28, 2012.

⁶ Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), October 30, 2013. In response, the Postal Service filed a motion for partial reconsideration. See Docket No. R2013-9, Motion of Partial Reconsideration of Order No. 1864, November 6, 2013.

⁷ Docket No. R2016-4, Order No. 3017, Order Approving An Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Canada Post Corporation), January 12, 2016.

Agreement within the product. The Postal Service also asserts that the negotiated rates in the Canada Post 2018 Agreement are expected to “improve the financial performance over the default” rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items. *Id.* at 4. The negotiated rates are intended to become effective for the period beginning January 1, 2018, and ending December 31, 2019.

COMMENTS

The Public Representative has reviewed the Canada Post 2018 Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the Canada Post 2018 Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. In addition, the Public Representative concludes that the TNT Agreement and the Canada Post 2018 agreements are functionally equivalent.

Functional Equivalence. In Order No. 2148, the Commission designated, “for purposes of functional equivalence comparisons in future market dominant FPO 1 [Foreign Postal Operators 1] filings,” the TNT Agreement filed in Docket No. R2010-5, as well as the China Post 2010 Agreement filed in Docket R2010-6, as alternative baseline agreements with selection of the baseline agreement in each filing at the option of the Postal Service.⁸ In its Notice, the Postal Service identifies the TNT Agreement as an appropriate baseline. The Postal Service states that the agreements contain many similar terms and conditions, and “they share a common market: foreign postal operators designated by their countries to fulfill the obligations of the Universal Postal Union Acts.” *Id.* at 10. The Postal Service asserts that in comparison with the TNT Agreement, the cost characteristics, the financial models used to project costs and revenues, and the methodology used to generate the negotiated rates are the same. *Id.* It states that while minor differences exist, they mostly reflect the longer, more well-developed nature of the business relationship between the Postal Service and Canada Post. *Id.* It specifies the differences between the Canada Post 2018 Agreement and the baseline TNT Agreement. The Postal Service states that none of these differences

⁸ PRC Order No. 2148, at 8.

detracts from the conclusion that the agreements are functionally equivalent. *Id.* at 11-13.

The Public Representative agrees. In comparing the TNT Agreement and Canada Post 2018 Agreement, the Public Representative concludes that the differences in the presentation of the financial model and the text of the agreement do not affect the basic methodology used in calculating financial results or the basic terms of the agreement that would alter a finding of functional equivalence.

Financial Improvement. Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criterion (1), the negotiated rates for inbound letter post items should result in improvement compared to the UPU terminal dues default rates. Based upon the negotiated rates, the financial model indicates that the Canada Post 2018 Agreement should improve the financial performance of the Postal Service during the term of the agreement. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Canada Post 2018 Agreement. *Id.* at 6-9.

The Commission issued Chairman's Information Request No. 1⁹ to clarify certain aspects of the Postal Service's request. Although the Public Representative does not have the benefit of seeing the Postal Service's responses, as the deadline for responding to the request is after the comment deadline set by the Commission, the Public Representative considered the questions raised by the Commission.

The Public Representative finds that the Postal Service did in fact omit IBRS rates that appear in the agreement from its financial model. See CHIR 1, Question 1. However, the IBRS rates in the agreement are calculated based on UPU rates, therefore there is no difference between contract rates for IBRS and UPU default rates.

⁹ Chairman's Information Request No. 1, November 20, 2017.

With regard to IPA ePacket Bags rates (CHIR 1, Question 2), the Public Representative assumes these are packet-shaped inbound letterpost items. The Postal Service's IPA product is bulk letterpost, therefore inbound IPA mail in this context is likely bulk letterpost from Canada.

It is unclear whether the inbound transportation costs referenced in CHIR 1, Question 3, would affect the financial model in any way. It is unclear whether the transportation arrangement with Canada Post would be the same with or without a bilateral rate agreement. If the transportation arrangement would be the same, then it is of no importance for the comparison of revenue between bilateral and UPU rates. Otherwise, if the transportation cost is increased due to the arrangement, it should be included in the Postal Service's financial model.

CHIR 1, Question 4 addresses the cost of Electronic Advance Notification transmissions. The Public Representative believes that the unit cost associated with sending transmissions should be negligible and therefore should not affect her conclusions regarding the financial aspects of the agreement.

Volume Estimates. In its financial model for the Canada Post 2016 Agreement, the Postal Service states that it makes volume projections for each category of mail in the agreement for the duration of the agreement. The footnote in the Postal Service's workpapers indicates that the volume estimates are a "USPS Pricing Decision based on volume projection". The Postal Service does not provide any information about its forecasting methodology, therefore the Public Representative cannot evaluate the quality of the Postal Service's volume projection. Different categories of mail within an agreement have different cost coverages. Inaccurate volume forecasts could make an agreement appear to improve the net financial position of the Postal Service if low cost coverage categories are weighted down and high cost coverage categories are weighted up. In general, the Postal Service should refrain from using estimates. And, if its financial model does rely on estimates, it should provide the Commission with methodology it uses to determine projected volumes.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Katalin K. Clendenin
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6860
Katalin.clendenin@prc.gov